

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 8, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP322

Cir. Ct. No. 2011PR75

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE ESTATE OF LUCETTA M. MAYER:

**LYNN MARIE KLINK, BENEFICIARY OF PURPORTED P.O.D. ACCOUNTS
AND PERSONAL REPRESENTATIVE,**

RESPONDENT,

v.

**PATRICK M. MAYER, BENEFICIARY AND PERSONAL REPRESENTATIVE
NAMED IN WILL, BY HIS GAL,**

APPELLANT.

APPEAL from an order of the circuit court for Washington County:
JAMES K. MUEHLBAUER, Judge. *Affirmed.*

Before Brown, C.J., Neubauer, P.J., and Gundrum, J.

¶1 NEUBAUER, P.J. This case is about the validity of certain payable on death (P.O.D.) designations on decedent Lucetta Mayer's bank accounts.¹ The documents at issue designated the accounts as P.O.D. to the decedent's daughter, Lynn Marie Klink, the personal representative of Lucetta's estate. Patrick Mayer, Lucetta's son, questions the genuineness of Lucetta's signatures on the P.O.D. designations. It is undisputed that the bank's business records were properly authenticated, and Patrick has not presented any evidence to rebut the prima facie showing that Lucetta signed the P.O.D. designations in the bank. We affirm the circuit court's grant of summary judgment in favor of Lynn Marie.

FACTS

¶2 Lucetta died on April 3, 2011, with a will designating Patrick and Lynn Marie as sole beneficiaries. During the administration of the estate, Patrick became aware of three P.O.D. accounts designating Lynn Marie as P.O.D. beneficiary. In response to Patrick's objection that the P.O.D. accounts were excluded from the estate, Lynn Marie moved for summary judgment seeking a determination that the P.O.D. accounts were properly excluded from the estate. Lynn Marie submitted a document entitled Certificate of Authenticity of Business Records from the bank's records custodian. The custodian produced pursuant to subpoena three documents entitled P.O.D. Beneficiary Designations, the first dated June 26, 2008, and two dated January 29, 2009, all bearing Lucetta's signature. The attached documents also included a Deposit Receipt acknowledging a deposit of \$2500 into Lucetta's P.O.D. account, dated

¹ WISCONSIN STAT. § 705.01(8) defines a P.O.D. account as "an account payable ... to one person during lifetime and on the person's death to one or more P.O.D. beneficiaries."

June 26, 2008, and also bearing Lucetta's signature. The circuit court granted summary judgment in favor of Lynn Marie, and Patrick now appeals.

DISCUSSION

¶3 We review a motion for summary judgment de novo, using the same methodology as the circuit court. *Yahnke v. Carson*, 2000 WI 74, ¶10, 236 Wis. 2d 257, 613 N.W.2d 102. Summary judgment shall be granted when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” WIS. STAT. § 802.08(2) (2011-12).² When, however, the circuit court's determination on summary judgment involves an evidentiary ruling that is committed to the circuit court's discretion, we review that decision for an erroneous exercise of discretion. See *Gross v. Woodman's Food Mkt., Inc.*, 2002 WI App 295, ¶32, 259 Wis. 2d 181, 655 N.W.2d 718.

¶4 The sole argument we address on appeal is whether the P.O.D. accounts were properly excluded by the circuit court from the estate as nonprobate assets.³ Patrick challenges the evidentiary foundation for the court's decision,

² All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

³ Lynn Marie argues that this court does not have jurisdiction over this appeal because the order granting Lynn Marie summary judgment was not a final order. In a probate proceeding, a party “may take an appeal ... at any time ... when a special proceeding disposes of an entire matter in litigation as to one or more parties.” *Sanders v. Sanders*, 2008 WI 63, ¶28, 310 Wis. 2d 175, 750 N.W.2d 806. We liberally construe any ambiguity to preserve the right of appeal. *Id.*, ¶33. Lynn Marie does not develop any argument to the contrary. While Lynn Marie also challenges the order appointing Attorney Kevin Demet as guardian ad litem, this order is not before us on appeal.

contending that the bank records were inadmissible absent authentication of Lucetta's signatures. We disagree. The circuit court did not err in considering the bank records and properly granted summary judgment for Lynn Marie.

¶5 The bank records were properly admitted under WIS. STAT. § 908.03(6), records of regularly conducted activity. To qualify under the statute, the record must be “made at or near the time by, or from information transmitted by, a person with knowledge, all in the course of a regularly conducted activity, as shown by the testimony of the custodian or other qualified witness.” *Id.* The bank's custodian of records produced the P.O.D. beneficiary designations for Lucetta's P.O.D. accounts. He averred in the accompanying certificate of authenticity of business records that he is a “duly authorized custodian of records ... with authority to execute this affidavit and certify to the authenticity and accuracy of the records produced with this affidavit.” The custodian further averred that the records were “original records or true copies” and that they were “made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of these matters”; “kept in the course of regularly conducted activity”; and “made by the regularly conducted activity as a regular practice.” The bank custodian's affidavit shows the P.O.D. designations to be records of regularly conducted activity.⁴

¶6 The records were also properly authenticated. WISCONSIN STAT. § 909.01 provides: “The requirements of authentication or identification as a condition precedent to admissibility are satisfied by evidence sufficient to support

⁴ While this certificate of authenticity of business records appears to make the attached documents self-authenticating under WIS. STAT. § 909.02(12), the parties do not address application of this statute and we need not reach it.

a finding that the matter in question is what its proponent claims.” Here, the P.O.D. documents were authenticated by the testimony of a witness with knowledge. *See* WIS. STAT. § 909.015(1) TESTIMONY OF WITNESS WITH KNOWLEDGE (testimony of a witness with knowledge that a matter is what it is claimed to be as a manner in which to authenticate or identify a document). The bank’s records custodian averred that the P.O.D. beneficiary designations were true copies of the regularly kept bank records. Patrick has not put forth any evidence or argument to call into question the bank representative’s affidavit. The circuit court did not err in determining that bank records were admissible.

¶7 WISCONSIN STAT. § 705.10, entitled Nonprobate transfers on death, provides that a P.O.D. designation may be made “either in the instrument or in a separate writing.” Sec. 705.10(a) and (c). A P.O.D. transfer is nontestimentary and thus does not require confirmation in probate. Sec. 705.10(4). WISCONSIN STAT. 705.02(1) provides language that “shall be effective to create” the P.O.D. account “when conspicuously printed or typewritten immediately above or adjacent to the place for the signatures of the parties to the account.” For a single party P.O.D. account, the language is: “THIS ACCOUNT/CERTIFICATE OF DEPOSIT IS OWNED BY THE PARTY NAMED HEREON. UPON THE DEATH OF SUCH PARTY, OWNERSHIP PASSES TO THE P.O.D. BENEFICIARY(IES) NAMED HEREON.” Sec. 705.02(1)(b).

¶8 Lucetta’s beneficiary designations recite, above her signature, the statutory language of WIS. STAT. § 705.02(1)(b), creating a single party P.O.D.

account. Patrick has provided no authority for his argument that additional proof of the genuineness of Lucetta's signature is required.⁵

¶19 The P.O.D. designations with Lucetta's signature were "accepted by the Bank," as evidenced by a date and the letters "CB" and the number "0022500" on a line labeled "Bank Representative/Branch." The employee was identified by the bank, through "her initials [and] employee number," as Christine Burdick. The designations, which were to be routed to various departments of the bank as directed at the bottom of the form, were date stamped as received the day following their execution. We also have a deposit receipt bearing Lucetta's signature, signed by Christine A. Burdick, noting the location as Menomonee Falls and dated the same date as the first P.O.D. designation, June 26, 2008. The receipt of the deposit of \$2500 notes that Lucetta's account is P.O.D. and that the deposit is "affected by" P.O.D. Patrick makes much of the fact that the "ACKNOWLEDGEMENT" sections on the P.O.D. designations are not filled in and notarized. But the forms themselves indicate that the bank only requires the acknowledgement when the document has been signed outside of the bank. Patrick argues that the date stamps with dates one day after the date of the signatures show that Lucetta did not sign the documents at the bank. Patrick produced no evidence to support this position.⁶

⁵ We express our chagrin that neither party has addressed the directly applicable statutory provisions.

⁶ Patrick's reliance on *Bruckner v. Prairie Federal Savings & Loan Ass'n.*, 81 Wis. 2d 215, 260 N.W.2d 256 (1977), is misplaced. The decision is based on a prior statute, which was repealed and recreated in 1973. *Id.* at 222. The only indication of the decedent's intent to create a P.O.D. account was an unattributed and typed entry added to the decedent's signature and ledger cards years after the savings account was opened. *Id.* at 217. There was no signed P.O.D. designation. *Id.* at 216-17. Here we have three separate, signed documents designating the accounts as P.O.D. in conformance with the statutory language of WIS. STAT. § 705.02(1)(b).

CONCLUSION

¶10 The three P.O.D. designations signed by Lucetta, dated and accepted by a bank representative, and the receipt for a deposit into one of the P.O.D. accounts, signed and dated by the same representative, were properly admitted. The bank's business records were properly authenticated, and the P.O.D. conformed to the statutory language creating a P.O.D. Patrick provided no evidence to create a genuine issue of material fact as to the genuineness of Lucetta's signature. The circuit court did not err in determining that the accounts were properly excluded from the estate.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.

